

A

FULL REPORT

OF THE

JURY CAUSE, SYME *v.* LIZARS,

ON

THURSDAY, MARCH 12, 1840.

TAKEN IN SHORTHAND BY

MR SIMON MACGREGOR.

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REPORT.

SUMMONS OF DAMAGES, JAMES SYME, Professor of Clinical Surgery in the University of Edinburgh ; against JOHN LIZARS, Professor of Surgery to the Royal College of Surgeons, Edinburgh.

VICTORIA, &c.—Whereas it is humbly shown to us by our lovite, James Syme, one of our Surgeons in Ordinary in Scotland, Surgeon in the City of Edinburgh, and Professor of Clinical Surgery in the University of the said City, *pursuer*,—against John Lizars, Professor of Surgery to the Royal College of Surgeons, Edinburgh, *defender*.—That in or about the month of July or August in the year 1839, or in some other month of the said year, the said defender wrote, and caused to be printed and published within the city of Edinburgh, a book, entitled, “A SYSTEM OF PRACTICAL SURGERY, with numerous explanatory plates, the drawings after nature, by John Lizars, Professor of Surgery to the Royal College of Surgeons, and lately Senior Operating Surgeon to the Royal Infirmary of Edinburgh, Part II.,” whereof many copies were circulated in the said city and elsewhere : That the said defender did maliciously, falsely, calumniously, and injuriously write, and cause to be printed and published, at page 196 of the said book, the following words :—“In every operation about the anus, however unimportant it may seem, the operator cannot be too careful in averting hemorrhage, as many have died from such neglect ; this was the fate, indeed, of a respectable apothecary in this city. Nor is it improper, as an additional warning, here to mention another case which was under the care of our Professor of Clinical Surgery a few years ago ; he operated on a gentleman for a slight fistula in ano, left the part inadequately defended, and dreadful hemorrhage ensued ; the Professor was sent for, arrived, groped about in the anus with his knife, *searching for a needle in a hay-rick*—I mean, for a blood-vessel to be tied ; meantime, the life of the patient was saved by *deliquium animi* ; but to this day the wound remains unhealed, and the unfortunate man a miserable nervous invalid, from the excessive loss of blood :” That the pursuer is, and has been since the

year 1833, sole Professor of Clinical Surgery in the University of Edinburgh, and in Scotland, and the said words so written, and caused to be printed and published by the defender, in so far as the same relate to the case said to have been under the care of the Professor of Clinical Surgery, are of and concerning the pursuer, and were maliciously meant by the defender to apply to the pursuer: That the statement contained therein is false, calumnious, and injurious, and was written and caused to be printed and published by the defender, with the malicious intention of imputing to the pursuer ignorance, want of skill, neglect, and recklessness, in his profession as a surgeon; and in order to hurt his good name and reputation as one of our surgeons in ordinary, as a professor in the said university, and as a practising surgeon: That the pursuer has been injured in his good name, character, and reputation foresaid, and in his feelings, by the said false and malicious statement. And although he has often desired and required the defender to make reparation for the injury inflicted on him as aforesaid, yet the defender unjustly refuses, or at least delays, so to do; Therefore, the defender OUGHT and SHOULD be DECERNED and ORDAINED, by decree of the Lords of our Council and Session, to make payment to the pursuer of the sum of L.1000 sterling, in name of damages, and as a *solatium* for the injury sustained by him as aforesaid; and of the farther sum of L.100 sterling, or such other sum as the said Lords shall modify, as the expense of the process to follow hereon, and of extracting the decree to be pronounced therein; conform to the laws and practice of Scotland, used and observed in the like cases, as is alleged.—Our will is herefore, &c.—*Dated and Signed 30th August 1839.*

DEFENCES for JOHN LIZARS, Professor of Surgery to the Royal College of Surgeons, Edinburgh; to the Summons of Damages at the instance of JAMES SYME, Professor of Clinical Surgery in the University of Edinburgh.

It is true that the defender is the author of a work entitled, “A System of Practical Surgery, with numerous explanatory plates, the drawings after nature, by John Lizars, Professor of Surgery to the Royal College of Surgeons, and lately Senior Operating Surgeon to the Royal Infirmary of Edinburgh.” It is true that Part II. of that work was published in 1839; and it is believed that many copies of it were sold. It is also true that in that work there occurs the passage which is referred to, but not fairly set forth in the summons; and it is true that the pursuer is the professor of clinical surgery alluded to in the defender’s work. But it is not true, as alleged in the summons, that the statement contained in the passage is false, calumnious, and injurious; or that it was written, or caused to be printed and published by the defender maliciously, or with the malicious intention of imputing to the pursuer want of skill, neglect,

and recklessness in his profession as a surgeon, and in order to hurt his good name and reputation, as one of Her Majesty's Surgeons, as a Professor in the University, and as a practising surgeon.

The passage in question occurs in a chapter devoted to diseases of a particular class, forming an important part of the subject of the defender's work. The treatment of these diseases is regarded as a matter of much importance and interest by the profession, and has been much discussed in several treatises and papers, by the pursuer and other members of the profession. The particular object which the defender had in view in that part of his work, at which the pursuer has taken offence, was to enforce the importance of using every possible care and precaution to avert hemorrhage. To illustrate the risk and danger of such an occurrence, the defender referred to two cases, one of which had happened even where the operation had been performed by the professor of clinical surgery; and he stated the circumstances of that case as he understood them to have occurred. He has since learned that, in one particular, to be immediately noticed, his information was inaccurate; but he is assured that, in all essential particulars, the statement of the case, as given by him, is substantially correct, viz. that the pursuer operated on the gentleman referred to,—that the part was left inadequately defended,—and that hemorrhage ensued,—that the patient fainted, or nearly so, to which the preservation of his life is to be attributed;—but that he continued for years a miserable nervous invalid, from the excessive loss of blood.

The defender has said that he now understands that upon one point he was misinformed, namely, that when, in consequence of hemorrhage having ensued, the professor was sent for, he arrived, and had to grope about for a blood-vessel to be tied. The defender now understands that the professor was sent for, but did not arrive,—and that it was not he who had to grope for the blood-vessel.—The patient operated on was the late Mr William Syme, residing in Keir Street, Edinburgh, and the operation was performed in or about the Autumn of 1833.

In practical works, such as that of the defender, it is usual and necessary to refer to cases which are understood to have occurred in practice, although they may not be recorded in any pre-existing work. It is even usual and allowable to criticise and impugn any course of treatment advocated, taught, or adopted by any writers, teachers, or practitioners, either as a general system, or in reference to particular cases, and the pursuer himself has done so most freely in his own writings. In the present instance, however, the defender did not indulge in animadversion,—he merely cited the case to illustrate the importance of a practical advice, which, as an author of a professional and practical work, it lay in his way to give, and to enforce. There is no ground for ascribing to him the motives alleged in the summons. There is more ground for ascribing malice to the pursuer in dragging the defender into Court in such an action,—for it is certain that many passages more fit to be made the subject of an action are constantly to be found in medi-

cal or surgical publications, and have been written and published both by the pursuer, and of him, without having been thought to merit a prosecution.

All the statements and allegations in the summons, except in so far as above expressly admitted, are denied; and the defender maintains the following plea in defence :—

The passage in the defender's work referred to not being of the character alleged, the pursuer is not entitled to recover damages from the defender.

Under protestation to add and eik.

DUNCAN McNEILL.

ISSUE in the Cause in which JAMES SYME, Professor of Clinical Surgery in the University of Edinburgh, is Pursuer, and JOHN LIZARS, Professor of Surgery to the Royal College of Surgeons, Edinburgh, is Defender.

IT being admitted that, during the year 1839, the defender printed and published a certain work entitled, "A SYSTEM OF PRACTICAL SURGERY," and that the said work contains the following words :—"In every operation about the anus, however unimportant it may seem, the operator cannot be too careful in averting hemorrhage, as many have died from such neglect; this was the fate, indeed, of a respectable apothecary in this city. Nor is it improper, as an additional warning, here to mention another case which was under the care of our professor of clinical surgery a few years ago; he operated on a gentleman for a slight fistula in ano, left the part inadequately defended, and dreadful hemorrhage ensued; the professor was sent for, arrived, groped about in the anus with his knife, *searching for a needle in a hay-rick*—I mean, for a blood-vessel to be tied; meantime, the life of the patient was saved by *deliquium animi*: but to this day the wound remains unhealed, and the unfortunate man a miserable nervous invalid, from the excessive loss of blood."

Whether all or any part of the said words are of and concerning the pursuer, and are false and calumnious, and to the loss, injury, and damage of the pursuer?

J. CUNINGHAME.

Damages laid at L.1000.

February 25, 1840.

JURY CAUSE,

SYME AGAINST LIZARS,

12th March 1840.

The Jury being impanelled, the DEAN OF FACULTY spoke to the following effect:—Gentlemen of the Jury—I have the honour to attend you on the part of the pursuer, Dr Syme, the Professor of Clinical Surgery in the University of Edinburgh; whose name and character are probably as well known to you as the situation he holds. He instituted this action for the purpose of putting the defender, Mr Lizars, to the proof, if he dared to undertake it, of a most atrocious calumny against him in regard to a surgical operation performed by my client. In the course of a work, which Mr Lizars, the Professor of Surgery to the Royal College of Surgeons in Edinburgh, published,—a gentleman certainly of great experience and standing in his profession,—in a work, of which he himself states that many copies have been sold,—a practical work on Surgery, illustrated with plates,—in that work, by way of enforcing a warning to operators, that they might not let their patients bleed to death, he proceeds to state a case which occurred some years before; in which he says that, from neglect on the part of Dr Syme, his patient very nearly bled to death, and that, though his life was saved, he remained a miserable nervous invalid, from the excessive loss of blood.

I need not tell you, Gentlemen, that a statement of this description, far exceeding the bounds of what the defender sets forth in his defences, is one which no person could leave without prompt and instant notice. Dr Syme, accordingly, took the course which you must feel to have been the effectual and complete course for the vindication of his character, on the one hand; and, on the other, for enabling the defender to prove, if he could, any part of the statement which he had chosen to make, and to show that the pursuer was entitled to no damages at all. In every action of damages such as this, the defender is called on, is permitted, and, what is more, is dared by the pursuer to prove the truth of his statement. If the case be a privileged case, that is, where the statement complained of was written or spoken in circumstances which authorised its being so written or spoken, an action of damages would be incompetent, unless you prove that the statement was so used with a malicious intent. If it be not a

privileged case, as this is not, it must be dealt with as we now do. The law holds that, in a case which is not privileged, the statement which a person ought not to make is *false*, if the party does not prove the truth of it; and it is upon this rule that a distinction is made in regard to privileged slander, where you must prove, as I have said, to render an action competent, that the words spoken or published were so used with a malicious intention.

Turn, Gentlemen, to the Issue in your hands, and see the nature of this atrocious libel:—"It being admitted, that, during the year 1839, the defender printed and published a certain work, entituled, 'A System of Practical Surgery;' and that the said work contains the following words:—"In every operation about the anus, however unimportant it may seem, the operator cannot be too careful in averting hemorrhage, as many have died from such neglect. This was the fate, indeed, of a respectable apothecary in this city.'" There is not a word as to who was the operator on the apothecary. It goes on to say:—"Nor is it improper, as an additional warning, here to mention another case which was under the care of our *Professor of Clinical Surgery*, a few years ago; he operated on a gentleman for a slight fistula in ano, left the part inadequately defended, and dreadful hemorrhage ensued." You see the bearing and import of this,—importing the grossest neglect that any operator can commit, since it endangers the life of the patient from the bleeding that must follow. Then it says:—"The professor was sent for, arrived, groped about in the anus with a knife, *searching for a needle* in a hay-rick,—I mean for a blood-vessel to be tied." Gentlemen, can you conceive a more revolting scene, set forth as if it were a true description—a description of the blundering rashness, neglect, inhumanity, and unskilfulness, of an operator? "Searching for a needle in a hay-rick,—I mean," says this classical gentleman, "searching for a blood-vessel to be tied." Then he goes on to say:—"Meantime, the life of the patient was saved by *deliquium animi*; but to this day the wound remains unhealed, and the unfortunate man a miserable nervous invalid, from the excessive loss of blood."

This, Gentlemen, is stated, observe, as a warning to all other operators in the country, and so recorded in this book by Professor Lizars, that throughout Europe, wherever it happens to be read, this instance of the neglect of Dr Syme may be present to the mind of all other surgeons as a warning to them in operating, and to show that it was owing to this providential fainting of the patient that he did not die from the loss of blood caused by this neglect. Gentlemen, if a man does undertake an operation in a fistula case, with gross inattention in the first instance, namely, by not defending the part from improper and excessive bleeding,—and then, if from unskilfulness, or from inhumanity, or from agitation, or the want of nerves, he is unsuccessful in securing the wound, when any accidental bleeding does subsequently occur in consequence of any such cause, that man practically tampers with the life of his patient, and he deserves all the exposure he can be subjected to. But this is not the

case here. One and all of you can form your own feelings from your knowledge of human nature ;—you know all the prejudices that exist in the mind of man in regard to operations by the surgeon's knife ;—you know the dread that many persons have of this ;—you know the vulgar prejudices that exist in regard to the rashness of surgeons operating on patients with a view to their own reputation, with the view of getting more and more *eclat* by their operations :—You know the vulgar prejudices that exist as to the consequences of any such operation, and how easily relatives and friends persuade themselves that the fault is with the operator, when such operations do not turn out successfully ; how easily, if wounds do not heal well, it may be ascribed to the unskilfulness of the operator. You know all these prejudices ; and if a professional gentleman in the same line, a fellow surgeon and professor, availing himself of all these prejudices, addressing himself to the passions of others, under the pretext of holding out a warning to scientific people, chooses to record such a charge as this, and not prove that there is a word of truth in the statement, I just put it to you if there can be any instance of grosser slander.

Professor Syme has brought this action for the purpose of a complete and full exculpation ; he has brought this action, knowing that the defender could, if he chose, undertake, in an issue, to justify the truth of what he said ; he has brought this action that the defender might put in an issue in regard to the pursuer's skill, if the defender should attempt to take it either in regard to his skill, his negligence, or inhumanity. All this the defender could bring before you if he dared attempt it. He might have taken an issue that the statements made were true ; and he might, if there had been one particle of truth in the statement that this patient had been improperly treated, have proved the whole to your satisfaction if it had been the case. The defender has taken a course the most unjustifiable, the most wantonly unjustifiable. He has put in defences, in which, with the exception of one part of the statement, he has said that all was true ; and then, Gentlemen, when the time comes when he might have asked for and obtained an issue to prove the truth of the statement which it was incumbent on him to do, he has shrunk from this course. Let us see how he has stated the facts. He says in his defences :—“ It is true that the defender is the author of a work entitled, ‘ A System of Practical Surgery, with numerous explanatory plates, the drawings after nature. By John Lizars, Professor of Surgery to the Royal College of Surgeons, and lately senior operating Surgeon to the Royal Infirmary of Edinburgh.’ It is true that Part II. of that work was published in 1839, and it is believed that many copies of it were sold ;” of course, no man can know this better than the author. “ It is also true, that in that work there occurs the passage which is referred to, but not fairly set forth in the summons.” It is admitted in the Issue, that the statement set forth there is correctly set forth, and the statement in the Issue is the statement in the summons. “ And it is true,” continues the defender, “ that the pursuer is the Professor of Clinical Surgery alluded to in the defender's work. But it is not true, as

alleged in the summons, that the statement contained in the passage is false, calumnious, and injurious ; or that it was written, or caused to be printed and published by the defender, maliciously, or with the malicious intention of imputing to the pursuer want of skill, neglect, and recklessness in his profession as a surgeon," and so forth. Then there follows this statement :—" The passage in question occurs in a chapter devoted to diseases of a particular class, forming an important part of the subject of the defender's work. The treatment of these diseases is regarded as a matter of much importance and interest by the profession, and has been much discussed in several treatises and papers by the pursuer and other members of the profession." Thus, Gentlemen, you see the aggravated nature of the calumny. " The particular object which the defender had in view in that part of his work—" (observe, Gentlemen, that the pursuer is a rival surgeon and lecturer)—" at which the pursuer has taken offence, was to enforce the importance of using every possible care and precaution to avert hemorrhage," which, as you know, means excessive bleeding. I dare say it was for the purpose of showing how important it is to prevent excessive bleeding that the defender wrote this part of his work. It is, says he, a matter of great importance, for see what has occurred in a case under the charge of Professor Syme ; and so, forsooth, to warn surgeons that they may not let thousands bleed to death, he tells the case that Professor Syme so abominably and scandalously maltreated and neglected ; and if this were proved, let Professor Syme be answerable for it. The defender goes on to say :—" To illustrate the risk and danger of such an occurrence, the defender referred to two cases, one of which had happened even where the operation had been performed by the Professor of Clinical Surgery ; and he stated the circumstances as he understood them to have occurred. He has since learned that in one particular, to be immediately noticed, his information was inaccurate ; but he is assured that, in all essential particulars, the statement of the case, as given by him, is substantially correct, viz. that the pursuer operated on the gentleman referred to ; that the part was left inadequately defended ; and that hemorrhage ensued ; that the patient fainted, or nearly so, to which the preservation of his life is to be attributed ;—but that he continued for years a miserable nervous invalid, from the excessive loss of blood." All this, he says, is true ; and is this not accusing the pursuer of the grossest possible maltreatment of the case ? The defender has said that he " now understands that, upon one point, he was misinformed, namely, that when, in consequence of hemorrhage having ensued, the Professor was sent for, he arrived, and had to grope about for a blood-vessel to be tied. The defender now understands that the Professor was sent for, but did not arrive, and that it was not he who had to grope for the blood-vessel. The patient operated on was the late Mr William Syme, residing in Keir Street, Edinburgh, and the operation was performed in or about the autumn of 1833," six years previously.

Here, then, one would think that any man having the feelings of a

gentleman, when he found that he had committed such a gross and unfortunate blunder, perhaps in consequence of listening too credulously to the information which he had received, would immediately have expressed his regret. It turned out that Professor Syme was not the person sent for,—that he was not the individual who groped about with his knife for the blood-vessel, seeking, to use the elegant expression of Professor Lizars, “*for a needle in a hay-rick.*” Would you not have thought that he would have most cordially, cheerfully, and willingly, expressed his belief that the rest of the information which he had received was as likely to be exaggerated? Would you not have thought that he would have been desirous to have shown that he had no intention of injuring the pursuer, and retracted that which was so highly injurious and calumnious? It may be that he received information in regard to this case; but it was from no one who had a knowledge of the circumstances; and if the fact had been otherwise, he might have had an opportunity of proving it before you to-day. I put it to you, Gentlemen, whether this calumnious statement was written in the tone of a person who wished simply to enforce the precaution in others to avert hemorrhage? Had this been the only object he had in view, would he have spoken in such terms of the practice of a brother practitioner? and after stating that the part had been inadequately defended, and that dreadful hemorrhage ensued,—and that the Professor had been sent for, and had arrived, would he have alluded in such gross and revolting terms to groping about the anus with his knife, *searching for a needle in a hay-rick*? It is admitted now that Dr Syme did not arrive, and that he did not grope about the anus with his knife. The vulgarity of the words used do not take away from the calumny of the libel,—“*searching for a needle in a hay-rick,*— I mean for a blood-vessel to be tied; meantime, the life of the patient was saved by *deliquium animi*; but to this day the wound remains unhealed, and the unfortunate man a miserable nervous invalid, from the excessive loss of blood.” This was not written in the spirit, temper, and tone of a person wishing to record a fact simply for the information and warning of others;—a fact, too, which he had ascertained on such information as would make any man cautious in publicly recording it. Not only is the statement false that the Professor was sent for, and arrived, but I tell you farther, that the defender will not be able to mitigate the damages, by showing that any one person, who had a knowledge of the case, had told him the facts of his statement. I am not talking of what he may have heard in the loose gossip of those who had no knowledge of the circumstances of the case. He has not ventured to say that he had adequate information on the subject. If he wished to show that any part of the statement was true, he was entitled to do so, and he might have taken an issue to enable him to do so. He has not ventured to take an issue in justification—that is, to prove the truth of the statement he made against Professor Syme. In all these cases, as the Court will explain to you,

where a party is not privileged, that which is injurious is presumed and held to be false, when an issue is not taken to prove the fact.

It is not incumbent on me to enlarge on this point. I just say, that the falsehood is presumed, according to the established, settled, and perfectly undisputed rule, when not attempted to be proved, and I only state this much, that you may understand that this is the rule. The defender has to prove that his statement is true; and if he does not, the statement is assumed to be false. That it is calumnious I need not assert; for it must appear to you at once that nothing more calumnious and injurious could be uttered against a gentleman of the pursuer's profession, and holding the *status* which he does in the University of Edinburgh, and as an operator enjoying, I may say, a European reputation.

I am perfectly satisfied, Gentlemen, that it is wholly unnecessary for me to dwell longer on this case. I have told you Professor Syme's object in having brought this action. It was, that the defender might retract the charge, and apologize for it; or *to dare* him to the proof of the truth of it. The defender has shrunk from the latter course, and he will not make the apology or the retraction required. Professor Syme does not want damages from his brother professor; but if the latter will neither retract his calumnious statement, nor apologize for it, while he has not ventured to prove the truth of the charge, you must, of course, proceed to mark your opinion of the nature of the calumny in the only way in which the character of the calumniated can be vindicated, namely, by a verdict of damages. Even now, Gentlemen, let Professor Lizars rise, and say that, upon the full enquiry which he ought to have made at first, he finds that the charge against Professor Syme is untrue, and that he apologizes for it, Professor Syme will ask for no damages. But if Professor Lizars will neither apologize nor retract his charge, while he shrinks from proving the truth of it, you will judge in what temper this calumny was written and published. On the part of Dr Syme I say, that this is not an action for the recovery of money in damages, if the defender wishes to avoid that result. I say that, even after he has put this statement on record, if Professor Syme receives that which may go forth to the world in justification of his character, in a matter in which not only his professional reputation and skill is involved, but on which the peace of thousands on whom he may be called on to operate may depend, he asks no damages in vindication. But if the defender chooses to publish such a statement as this, and then put in his defences that what he published was substantially true, with the exception which he admits, and shrinks from the proof of his allegation on the one hand, not venturing to take an issue to substantiate that allegation, and, on the other, will not, before a jury, after admitting that he has committed a gross blunder from some idle gossip which he had heard, apologize and retract his charge, withholding from his brother practitioner the open and public vindication of his character, which he is entitled to between man and man, and more, between surgeon and surgeon, if he will not do that which will be a complete vindication to Dr Syme, who wishes

to pocket nothing by an action of damages against a brother practitioner, it is your business to mark your opinion of the calumny which the defender will not retract or apologize for, by the only verdict which in such a case can be given.

The Dean then put in evidence Professor Lizars' "System of Practical Surgery."

Dr DAVIDSON was then called, and examined by the Dean :

You are a physician of twenty years standing in Edinburgh? Yes.

Professor Syme is Professor of Clinical Surgery in the University of Edinburgh? Yes.

Have you frequently consulted with Professor Syme, and seen him operate in cases of *fistula*? Yes, and in other cases.

Is fistula connected with consumptive complaints? It is frequently met with in consumptive complaints.

Does the healing in cases of *fistula* very much depend upon the healthy state of the patient? Very much.

Have you seen the passage in question in the treatise of Mr Lizars? I have seen it both in the book, and also in a paper.

Has the statement of improper treatment, there imputed to the professor, the tendency of being highly injurious to Dr Syme? I think it has the tendency to be very injurious.

It is an allegation of gross maltreatment and neglect? It is an allegation of carelessness and neglect, and also of not properly guarding against hemorrhage.

And with those who might not otherwise have confidence in Dr Syme it might great distrust? It must naturally have that tendency.

Dr TRAIL, being called, Mr PATRICK ROBERTSON said, My Lord, I shall hold Dr Trail as concurring with Dr Davidson, although Doctors generally differ.

DEAN.—We have medical gentlemen from the country to examine to the same effect.

Mr ROBERTSON.—I take all your doctors in town and country—Dr Davidson and Company, as concurring.

DEAN.—These medical witnesses, then, who are held to concur with Dr Davidson, are Dr Trail, Dr Dewar of Dundee, Dr Bell of Dunfermline, and Mr William Wood of Edinburgh.

Mr ROBERTSON.—I take them all to the same import.

DEAN.—This is the case on the part of the pursuer.

Mr PATRICK ROBERTSON, for the defender.—Gentlemen of the Jury —Notwithstanding that my learned friend, the Dean of Faculty, has, with becoming gravity, stated the case on the part of the pursuer—notwithstanding he has told you that the peace and comfort of thousands to be operated on depend on the result of this trial, because, in the course of a medical treatise addressed exclusively to medical men, an attack has been made on a gentleman of such high reputation, and such great status in his profession, as the pursuer, that no tyro in surgery can read the attack without being astonished at the statement—notwithstanding this, and notwithstanding that an apology has been demanded—not exactly at the mouth of the pistol, but in a tone of defiance which rendered it impossible for any man possessing the feelings of a gentleman, to give the apology so demanded—notwithstanding that my client is accused of being destitute of those feelings—as having indulged in gross vulgarity, and in abominable and disgusting language, (by describing a part of the human frame by its technical name)—notwithstanding all this, and although I am not in the condition, having taken no issue in justification, as my learned friend over and over again stated to you, of justifying the alleged libel—notwithstanding all this, I must say, that I think the learned Professor, the pursuer of this action, would have better consulted his own position in society, and the dignity of the University in which he holds a chair, and the peace and comfort of the thousands on whom he may be called to operate, who never heard, and never were likely to hear, of this practical work—if he had said nothing about the matter at all, and had exhibited less of that *odium medicum* known in all ages since the days of Esculapius himself. The doctors are, indeed, an irascible race. We lawyers never quarrel, although we have hard hits now and then at each other, and bandy about pretty tight words occasionally; but we are otherwise perfect lambs, and no dealers in prosecutions for slander. Not so the doctors.

No evidence has been adduced on the part of the pursuer, except that of Dr Davidson, with whom I have no fault to find, and of the other medical men who were held to concur with him. They are all of opinion that a passage of the description complained of, read by those who had not sufficient knowledge of the skill of the operator, would tend to shake their confidence in him, and induce them to believe that he was not fit for the exercise of the important duties of his profession. Gentlemen, I am not going to trouble you with evidence on the part of the defender; but I must call your attention to one or two points, and the observations which I am to address to you are short and obvious.

The book in question, I dare say, none of you ever heard of before this day, and I hope none of us will belong to the class of the thousands to be operated on, whose peace and comfort, it seems, are so much involved in the present proceedings. The passage complained of occurs in the second part of a treatise on practical surgery; and the book is stated in the

summons to have been published in the month of July or August 1839. Pretty sharp firing, gentlemen; the summons is issued on the 30th August 1839. There is no statement of any demand for an apology having been made at this time, and before the summons was served. No. The book is out, and it is no sooner published than the sharp-eyed *rival* Professor, the sharp-eyed *brother* author, (as he calls himself,) the keen-edged Dr Syme, perceives the statement. Does he come forward like a gentleman and fellow-lecturer—like a calm scientific man to his brother lecturer, and ask for an apology? Does he say, what is the meaning of all this? I did operate on my namesake, Mr Syme; but I did not grope about the wound, “searching for a needle in a hay-rick,” meaning “for a blood-vessel to be tied.” I did operate on this gentleman, but your other statement is untrue. Explain this to me candidly. Nothing of the kind occurs. The action is at once raised.

Gentlemen, we could not justify the whole statement contained in this issue, because we found that we were partly mistaken; but the pursuer might have adduced evidence to prove that there was no bleeding, no fainting, no injury done to the patient. He knew the case, and he has not said that it was a fiction. There was a question put to Dr Davidson about fistula being occasionally accompanied by consumption. What that has to do with the case alluded to, I do not know. The pursuer must know the particulars of that case. He does not deny that he was the operator. No man can have a doubt that hemorrhage or excessive bleeding is a thing to be avoided as dangerous to the patient; and if there had been no bleeding in the case of Mr Syme the patient, in 1833, it is very odd that Professor Syme, the operator, does not prove, or even attempt to prove, the fact that there was no such bleeding. It is easy to *dare* me now to prove improper treatment when I come into Court; but, Gentlemen, I could not get an issue in justification, unless I was to justify the whole slander as stated in the libel. The pursuer had it in his power, if such were really the case, to prove proper treatment—to prove that there was no bleeding, no fainting. But this he has not done. The defender, on the other hand, is not legally in a condition to lead any evidence. This is most important for your consideration.

I publish this statement in a book, treating of diseases of the *rectum*. There is a long passage in that book on the subject of *fistula in ano*. There seems to be a great war raging on this subject among the doctors. They are divided into two great parties—the Pluggites and the Anti-Pluggites. One set are for defending with double care; another trust to the tightness of ligatures, where these are used, or, instead of compression, they trust to a little bit of lint introduced into the wound. In short, there is war *to the knife*, literally, on this great question. I suppose the whole of the University of Edinburgh, Professors as well as Students, are divided into Pluggites and Anti-Pluggites, and whether we may not have another *College row* on this subject, I cannot tell; but, at all events, there is arguing

to and fro, and writing book upon book on the question. My distinguished and esteemed friend, Mr Liston, writes a treatise on surgery, and he writes just in the same sort of style as the rest of the doctors. They all employ a very *graceful* style—they all write with an *amiable* spirit. One of the leaders of the Anti-Pluggites, I see, writes in his book a furious attack on my client, and then he sends it to him “with the respectful compliments of the author!” This is the way they go to work.

Now, the defender is a keen Pluggite, and in his argument on the controversy—“Above all,” says he in his book, “for God’s sake, take care of hemorrhage. An apothecary died from that cause in this city.” There is no dispute about that melancholy fact; and then, as an additional warning, he adds, in the passage complained of, “take care, above all, of the practice of the Anti-Pluggites; for in the hands even of the great Dr Syme, the Professor of Clinical Surgery in our University, himself—even in his hands—such is the danger of not defending well the parts, that a patient suffered from hemorrhage.” Surely there was no harm in this.

When the case comes into Court, I discover that I have been misinformed in the statement that the Professor searched the wound for a blood-vessel to be tied, which, I presume, is most difficult to be found, in these dark and mysterious regions, where I trust none of us will ever grope or be groped upon. In this I was mistaken; but the rest that remains is, that as a warning, I, the champion of the Pluggite system, tell all the medical men, or others who may read my book, that in the hands of an Anti-Pluggite, —in the hands even of that eminent surgeon, Professor Syme, hemorrhage may ensue, if the parts are not adequately protected; therefore take care, ye operators, take care, all you public who are to be operated upon, take care, all ye clinical people, take care to prevent hemorrhage! In this part of my treatise, I am beseeching all medical men to take care that no hemorrhage shall ensue. It is the most dangerous and most fatal thing that can occur in cases of this description. I can find passage after passage, and case after case, in medical works illustrating the danger of hemorrhage from the want of adequate defence. It is *inadequate defence* that my client is finding fault with. And it is as clear as the sun that the defence had here been inadequate, for there was hemorrhage. It is not the object of the operator that the patient shall bleed to death; and yet can there be a doubt that there was dangerous bleeding here? The author is merely enforcing the necessity of adequate defence. It does not necessarily follow, that because hemorrhage ensued, there was want of skill in the operator. An accidental circumstance might occasion a hemorrhage. Though to all human eye the part had been adequately defended, yet it might be that the defence had failed by accident, and not by any great blunder on the part of the operator. Does not this show the necessity of adequate and proper defence in such cases, as hemorrhage is the great thing to be avoided? It is

against this evil that my client is warning all clinical men, and was he not justified in so doing?

My learned friend, the Dean of Faculty, says, that his client is only asking for an apology—he does not want money. What does he want, then, by bringing an action here? He wishes public vindication and not money! This is an odd way of asking it. I publish a paper offensive to a friend, and he brings an action against me for damages, but does not wish money—not he! He wants that reputation, which is too high to be affected where he is known, to be publicly vindicated—*that*, he says, is his object. Instead of coming to me, or sending a friend, (I do not mean a pistol affair,) he fires off a summons against me, the very next day after the publication of my volume. “I have caught,” says he, “my rival Professor now—I have the rival author in my power—I will show him what I will do. My character stands high, and as it does not require vindication in the city of Edinburgh, or among medical men, to whom the treatise is addressed, I will show my amiable spirit—I will show that there is nothing of the spirit that actuated him in my composition—I will show that I am all mildness and gentleness—that there is none of the spirit of the *serpent* in me, and therefore I at once fire off an action of damages, concluding for the small sum of L.1000! I bottle every thing up till I come to the trial, and, in the mild language of the Dean of Faculty, I accuse the defender of gross vulgarity, of being devoid of the feelings of a gentleman, and after all that, as I do not want money, when I say he is destitute of the feelings of a gentleman, I tell him that if he will rise up and reply, ‘I thank you, sir, for your great lenity and kindness, I beg your pardon,’ I will then let him off—I want no damages!”

Gentlemen, I cannot justify in law that part of my statement, with respect to the hemorrhage, which I hold to be correct, having admitted that I was misinformed as to this groping in the hay-rick—I cannot in this court be allowed in law to justify the one half of my statement, while I admit that, in point of fact, I am not in a condition to justify the whole. The pursuer, on the other hand, might have brought evidence, if he could, that there was no hemorrhage, no fainting in the case of his namesake, Mr Syme; but I cannot do so. He has brought no such evidence; and yet he says, I will vindicate my character by bringing this action of damages, or I will have a public apology, because you, by your statement, have disturbed the peace of thousands; and the world at large, who do not read medical books, in general, is yet, it seems, anxiously waiting the result of the proceedings of this day, in the great cause of *Sým v. Lízars*, or *Sým v. Lízars*!

Gentlemen, this issue relates to a horrid subject, a disgusting subject, and one which should never have been brought under discussion here. This is a very contemptible case: but I say the institution of it is traceable—(and I shall read you a passage of rather an amusing kind, considering where it comes from, explanatory of this)—I say it is traceable to a principle of *medical human nature*—I say medical human nature. They

are, indeed, a queer set, the doctors ! I shall read you a statement by one of themselves, descriptive of their extraordinary sensations, and irritability, which is the besetting sin of the doctors ! Vituperation is the very language of the doctors—it speaks from the heart to the heart. The author of the passage, a doctor himself—will the Dean of Faculty allow me to mention his name, without being held as leading evidence ?

DEAN.—No.

MR ROBERTSON.—Well, then, the author, whom I may not name, is a doctor, and this is the doctor's statement :—" Whatever feeling may exist as to the manner in which he has treated the opinions of others, the author knows that his efforts are perfectly sincere and well intended. In teaching the principles of a profession of such unbounded importance to mankind, he has ever felt himself called upon, by the combined influence of reason and humanity, to treat professional statements, theories, and practices, in the most unreserved manner. No duty is more incumbent on a medical writer, on whose labours the lives and happiness of thousands may depend. The author is not aware that he has ever been guilty of indulging in any expression that he would be afraid to repeat in the presence of the persons whose opinions he has impugned ; neither can he be justly accused of bestowing praise from personal friendship, nor of condemning from personal animosity," and so forth. After thus praising himself, he continues :—" The author most heartily deplores the morbid sensibility and irritability which exist among medical men—no parallel to which can be found in the history of any other liberal profession. Few medical men can bear to know that the soundness of their opinions has been questioned ; they regard any such attempt as a signal of deadly personal hatred, and view it in the same light as if their moral character were maliciously assailed." Gentlemen, we have a nice example of this in the great Anti-Pluggite, Professor Syme. The author goes on to say :—" On what circumstance does this frame of mind depend ?" Listen to the philosophical reply : " The author has always attributed it to an overweening conceit, selfishness, and pusillanimity." I am very much of this doctor's opinion. " Some may object to these statements, however true, being put in print, because they may think them calculated to injure the dignity of the profession, and to produce bad feeling. But the author cannot believe in the existence of real dignity and good feeling, where there is such a deplorable want of high-mindedness and moral courage ; besides which, *these pages are written expressly for the professional, and not for the public eye,* (so was the book in question.) It cannot be denied, that practitioners in medicine stand too low in the scale of public estimation, and that '*something is rotten in the state of Denmark* !'"

Gentlemen, if there be something rotten in the state of Denmark, surely, it is not the great fistula case which is to remedy the evil. This

will not purge away that rottenness—this action will not raise the profession in the estimation of the public—this will not show that high-mindedness and dignity, that moral courage and confidence in a man's own character which tramples on and despises such attacks as these. Might not the pursuer, conscious of his own moral rectitude, conscious of his own professional reputation, conscious that that reputation is endearing him to his fellow-citizens, rising as this professor is in public estimation as an operator, and gaining for the University of Edinburgh, as my learned friend says, a European reputation, might he not, I say, have allowed this matter to pass unobserved? I should have liked him much better had he despised sending such a summons against his rival operator and professor, thus preventing him at once from making an apology or explanation, by having immediate recourse to law as he has done, excluding by that appeal the possibility of all explanation by one gentleman to another out of Court—taking his ground as pursuer in a court of law at the very first moment—and concluding by demanding an apology in a court of justice, after abusing my client for vulgarity and want of gentleman-like feeling. I say, that Professor Syme would have consulted his own high position better, would have better adorned his station, by attending to his patients, by looking after the peace and comfort of those thousands who are entrusted to his care, than by wasting your time with such a case as this—by coming into a public court, and holding up unnecessarily to the public eye so revolting a subject, and thus endangering that confidence placed by the public in himself, by the publicity of these proceedings. Public confidence in medical skill is always best secured by not opening to the vulgar eye the secrets of the sick-chamber or the operating table. The pursuer should have allowed the matter so to rest. He wants no money! If he wants no money, what he is to get here I do not know. If he wants no money by this prosecution, I am sure he has gained no laurels. Professor Syme stands high in the profession; and, if anything could lower him in that profession, it is in thus descending to be tossed about like a shuttlecock in a court of justice, with a rival Doctor, who has only been maintaining his own views in a Medical Treatise, and enforcing the necessity of guarding against excessive bleeding. Who, in the name of wonder, out of the medical profession, ever would have heard of this treatise, but for the present proceedings? And who that read it was to be injured by it? It is not a book that is to be found in circulating libraries, or tossing about a drawing-room. It is intended merely for the profession; and if it has been opened to the public eye to the injury of patients, Professor Syme has himself alone to blame. This is his act—not the defender's. Gentlemen, I trust your verdict will teach him a lesson by which he may profit in future. I say, in conclusion, in the name of heaven, why was such a paltry case brought here?

THE LORD JUSTICE-CLERK.—Gentlemen of the Jury, You have heard

the issue read, which it is now your province to decide upon, keeping in view the admission that the defender did print and publish a certain work, and that that work contains the words set forth in the issue. In support of this action, which has a conclusion for damages to the extent of L.1000, you have had evidence only of this description; the defences in this action on the part of Professor Lizars; and the record, and statements, and admissions therein, and the evidence of Dr Davidson, who says he has been a physician in Edinburgh, &c.—(Here his Lordship read the evidence of Dr Davidson.)—You will recollect also that there was a fair admission that you are to hold the other medical gentlemen proposed to be called, Dr Trail and others, as concurring in the sentiments expressed by Dr Davidson. This admission being made, the case on the part of the pursuer was closed.

You heard the opening speech of the Dean of Faculty as to what the nature of the case is, and you heard also from the learned gentleman who conducts the defence, that which he thinks necessary for your consideration in regard to this issue. You have observed the way and manner in which the case has been presented to you. Confessedly, it is not a privileged case. If a professor, or any person whatsoever, publishes a work, and puts forward in it what is alleged to be injurious and calumnious, and he has no privilege, and does not justify on the record by taking an issue to prove the truth of what is complained of in that unprotected publication, the presumption in law undoubtedly is, that the charge is false; and it is the province of the Jury to judge whether it is also calumnious.

Now, you have heard the view taken of this case by the learned counsel, Mr Robertson, who endeavoured to persuade you that it is altogether a ludicrous one, hardly deserving of serious attention, and that it is as likely to be injurious to the pursuer as it can possibly be to the defender;—that instead of raising the pursuer's character, it may affect it; and, in short, that it is one of those paltry quarrels a great deal too characteristic of the profession in which these two gentlemen are engaged, and ought to be treated as undeserving the regard or attention of a court of law or a jury. Gentlemen, I have no wish to diminish the effect of what you think is fairly due to the observations thus made. But while it is your duty to consider them, I am persuaded you will consider them in reference to the real nature of the case you are trying; and as you cannot entertain any doubt that there is no attempt to prove the truth of this statement, you are just left to this, that no sort of apology having been made for what is complained of here, you are to decide whether these expressions, printed and published in a work for general circulation throughout the medical world, and to be read by all who choose to amuse themselves by such reading,—whether these expressions are injurious to the pursuer, and warrant him to demand damages; and if you are satisfied that damages are due, you are to judge to what extent.

Now, as to the calumnious nature of the charge, independently, I must say, altogether of the evidence of Dr Davidson, with whom all the other

medical gentlemen intended to be called are held to concur, that to those who do not know Mr Syme, it must be considered as injurious indeed; that such a charge would be injurious to any medical man, no one can for a moment doubt. I am not going to trouble you with reading over the words again. You know the nature of the operation, and you will observe that nothing can be more prudent in a teacher, whether in a publication or in a lecture, to warn all persons to be extremely cautious and circumspect in all such cases, carefully to guard against what is so apt to occur, and to proceed with that caution that is necessary, to provide adequate guards against the occurrence of it. It does not require a medical man to tell you that excessive bleeding is dangerous, and that nothing can be more proper than to inculcate the necessity of care and attention, in regard to a fault that has again and again been enlarged on in many volumes on the subject. But, Gentlemen, the defender in his work, not content with mentioning the case of the unfortunate apothecary who died in consequence of such want of care and attention, refers to a particular case in regard to which you have no occasion to call for evidence, because he says it was under the care of our Professor of Clinical Surgery. You have the words there before you: "He operated on a gentleman for a slight *fistula in ano*, left the part inadequately protected, and dreadful hemorrhage ensued; the Professor was sent for, arrived, groped about in the anus with his knife, *searching for a needle in a hay-rick*,—I mean for a blood-vessel to be tied," &c.

Now, Gentlemen, it is your duty to look to the plain and obvious meaning of these words, and see if you can entertain any doubt that they are directly, and unequivocally, imputing the grossest neglect on this occasion, leaving the part inadequately defended; and then that dreadful hemorrhage ensued; and this is followed by saying that the Professor was sent for, and that he groped about the wound with his knife, searching for a blood-vessel to be tied. Of all characters this is one of the worst that could be given to a medical gentleman. You cannot lose sight of what is here stated, imputing to him the unskilfulness or carelessness of the most ignorant boy that ever took a surgeon's knife in his hand. Then the defender says, "Meantime, the life of the patient was saved by *deliquium animi*; but to this day the wound remains unhealed, and the unfortunate man a miserable nervous invalid, from the excessive loss of blood."

Gentlemen, I am perfectly persuaded that you have formed your opinion as to the nature of that statement in this publication, which is not entirely confined to the profession. It particularizes a certain case, and designates a certain individual, as leaving the wound inadequately protected. I was astonished that after having fairly confessed that false information had been given that he was mistaken in the person who arrived, and groped about for the blood-vessel, that the defender did not offer an apology to the pursuer. Is there any thing in his defence to do away with the imputation which the rest of the statement conveys? Not one syllable. All that I have heard is, that, instead of resorting to a court of law, in order

to put an extinguisher on this part of the publication, the pursuer ought to have allowed it to pass as undeserving of notice ; and that the action being brought, there was no opportunity left, according to the doctrine laid down by the learned counsel, for the defender to come forward and admit that as he was grossly deceived in one point, he might have been so in another. If the defender had said, " I am sorry for it. I was blameable in holding that you, a brother professor, a brother operator, had been negligent in your duty," nothing farther would have been required. You must take into your view that the one is Professor of Surgery in the University of Edinburgh, and the other the Professor of Surgery in the Royal College of Surgeons, each of them eminent operators, and each of them lecturers ; and would it not have been common fairness in the defender to say, when he admitted that he was misinformed in one part of his statement, " I have published this book with no intention to disparage you, and I trust you will accept of this apology ;" if that had been said, you have the authority of the pursuer's counsel, that there would have been an end of this matter altogether. Instead of this, defences have been given in, in which, with the exception alluded to, the statement is affirmed to be correct in all essential particulars. This is the statement, and when the time arrives when the defender might have taken an issue, no issue is taken in justification, to prove that the statement, with the exception referred to, was true. At the close of his speech, the Dean of Faculty distinctly stated, that the pursuer brought this action solely for the vindication of his character, and even at this stage of the case, said that he had been instructed by his client to say, that if the defender was ready to make a satisfactory explanation, he would give you no farther trouble in the case. It is to my great surprise that that course has not been taken. In this state, Gentlemen, the case is left to you. If you view the case in the way in which I think you will view it, without assistance from any one, you will be of opinion that the statement published by the defender is injurious to the pursuer. You are then to consider what damages to award.

I shall make only one other observation : Mr Robertson said that the publication in question was confined to the medical profession. This may be very well ; but observe that Dr Davidson swears to you that he has consulted with Mr Syme, and, I presume it naturally follows that a physician, whose duty it is to prepare the mind of his patients to undergo an operation of a dangerous nature, is called on frequently to say whom he would advise to perform such operation, and looking to the evidence of Dr Davidson, ask you to say, whether you think that any physician whatever would, with this charge standing against the pursuer without apology, as if he acquiesced in the justice of such an imputation, recommend him to a patient to perform in his case.

Gentlemen, if you are of opinion that you are under the necessity of finding for the pursuer, you are to consider, there being no apology made, what are the fair and reasonable damages that you feel yourselves called upon to award, always keeping in view, that it is no part of the duty of a

jury to award vindictive damages, and keeping in view also that it is not remuneration that the pursuer is looking for, but the vindication of his character from the imputation cast upon him by this publication. It is your duty, Gentlemen, to give to the arguments on both sides of the bar all the weight you think they deserve.

The jury retired, and after an absence of ten minutes, returned with a verdict for the pursuer, L.50 of damages.

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